

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 96 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAMOD MOHANLAL GUPTA

Versus

STATE OF GUJARAT

Appearance:

MR J G Shah, Sr.Counsel with PRAFUL J BHATT for Petitioner
Mr K M Mehta, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/04/97

ORAL JUDGEMENT

On a private complaint, the learned Judicial Magistrate First Class, Vadodara directed investigation under section 156(3) of the Criminal Procedure Code against the petitioner for offence under sections 467, 468, 471 and 420 of I.P.C. This Court, by order dated 22.1.1997, granted Anticipatory bail. Of course liberty was given to the police to apply for remand in case it is necessary. In view of this, the police applied for

remand on 7.12.1997. The learned Judicial Magistrate First Class, Vadodara, by order dated 5.3.1997 granted remand for a period of 5 days. This Revision Application is against the said order.

2. It is contended by Mr J G Shah, learned Sr.Counsel appearing for the petitioner that though this court gave liberty to the investigating agency to apply for remand, the learned Magistrate has not considered as to whether in the facts of the case, the remand was absolutely necessary, more particularly when the High Court considered it to be a fit case to grant anticipatory bail.

3. Mr DM Chauhan, Police Sub-Inspector who is investigating the case has filed affidavit. It is stated by Mr Chauhan that there is an allegation that the accused sold 750 shares of State Bank of India worth Rs. 2,25,000/-.The said shares were bogus or fake. It is alleged that the petitioner has avoided many times the notice of remand application made by the police before the Judicial Magistrate First Class, Baroda. He has further stated that the petitioner is a wilful defaulter of many of his creditors who are cheated by him in one way or other. It is stated in para 10 that the petitioner was President of Vadodara Stock Exchange and he might have committed fraud with so many poor investors. It is also stated that if the petitioner is not arrested, police will be helpless in the investigation and the truth may not come out. An affidavit-in-rejoinder has been filed by the petitioner-Promod Mohanlal Gupta. It is stated that in pursuance of the order of this court, he remained present at the police Station on 27.1.1997. He has given further details with regard to the investigation. He has stated that he was out for for a period of 5 days or so. He has given complete details with regard to the alleged deals and submitted that all these aspects were considered by this Court while granting the anticipatory bail.

4. I have heard the learned Advocate for the petitioner and also the learned APP. I have also gone through the impugned order. It is of course true that this court has given liberty to the investigating officer to apply for remand. In cases where the High Court grants anticipatory bail, it must be understood that it is only in rare cases, anticipatory bail is granted and at that time liberty is of course given for applying for remand but such liberty should be availed only in exceptional case, and the concerned Magistriate should be very careful in considering the prayer for remand,

keeping in view that the Court while considering the prayer for anticipatory bail, has considered the matter on merit. The reading of the impugned order does not show that there was any such compelling reasons which calls for taking the petitioner into custody and remand to the police. In my view, the learned Magistrate acted arbitrarily in exercising powers for granting remand.

5. In view of the aforesaid, this Criminal Revision Application is allowed. The impugned order dated 5.3.1997 granting remand by the learned Judicial Magistrate First Class, Vadodara is quashed and set aside. Rule made absolute accordingly.

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